IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

D.B. CRIMINAL APPEAL NO.867/2001
(Shankar Lal Vs.State)

Against the judgment and order dated 20.10.2001 passed by learned additional Sessions Judge (Fast Track), Chittorgah in Sessions Case No.56/2001 (State Vs.Shankar Lal)

Date of Judgment : March 15th, 2005.

P R E S E N T

HON'BLE MR.JUSTICE B. PRASAD
HON'BLE MR. JUSTICE SATYA PRAKASH PATHAK

Mr. M.L. Garg for appellant.
Mr. V.R. Mehta, Public Prosecutor.

BY THE COURT : (Per Hon'ble Pathak, J.)

This appeal under Section 374(2) Cr.P.C. is directed against the judgment and order dated 20.10.2001 passed by learned Additional District and Sessions Judge, (Fast Track), Chittorgarh, in Sessions Case No.56/2001 (State Vs. Shankar Lal), whereby the accused appellant has been convicted and sentenced as

under :

U/s. 302 I.P.C.	Life Imprisonment and a fine of Rs.2,000/- in default of payment of to further ordergo two months simple imprisonment.
U/s.3 of Explosive Substances Act,1908	Five years' simple imprisonment and a fine of Rs.500/- and in default of payment of fine to further undergo one month's S.I.
U/s/5 of Explosive Substances Act,1908	Five years' simple imprisonment and a fine of Rs.500/- and in default of payment of fine to further undergo one month's S.I.

Briefly, stated the facts giving rise to the present case are that PW-16 Bhagwanlal Suthar presented a written report Exhibit-P/27 before PW-30 Ratan Singh, ASI, Police Station, Kapasan on 14.11.1997 at about 11.30 a.m. in the morning with the averments that his sister Ratni was got married in her childhood with one Shri Gopal resident of village Dhamana. She was living in her maternal house for last six months in village Tasvariya. She and the accused were also residing in the same locality. They left the village without informing anybody on 5.11.1997. It was further stated that he knew about illicit relations of the accused with Ratni. On account of defamation of the

family, he did not tell about the incident in the village. A search was made at different places in the villages and other towns but whereabouts of them could not be known. The deceased while leaving the house had a sum of Rs.500/- and also silver and gold ornaments with her. Report of the incident was not lodged in the Police Station for the reason that it may give a bad name to the deceased and also to the family. It has further been stated that he heard a rumour in the village that a dead body of a lady was lying besides the well of accused Shankar situated near the Neemadi. It is further the case of the prosecution that complainant PW-16 after hearing about the dead body went alongwith some other persons to the well, the dead body of the deceased was lying there. The well belonged to accused Shankar Lal. The dead body was in a very bad shape with several injuries. Specifically, it was mentioned in the report that it was accused Shankar Lal who committed the murder of the deceased. Excepts tops (Ear-rings) no other ornament was found on the dead body.

On the basis of written report Exhibit-P/27, usual

investigation commenced and a regular FIR Exhibit-P/45 was chalked out and a Case No.402/99 under Sections 364, 365 and 302 IPC was registered. During the course of the investigation, statements of the witnesses were recorded. To prosecute the accused under the provisions of the Explosive Substances Act, 1908 (hereinafter referred to as `the Explosive Act') sanction Exhibit-P/49 was obtained. On the information of the accused, clothes of the deceased were recovered. The police also collected the evidence from various places where the accused alongwith deceased had stayed i.e. the hotels and guest houses. The evidence was also collected in relation to the ornaments, which were sold by the accused at different places. The post-mortem of the dead body was got done and it was found in the post-mortem report (Exhibit-P/35) that the cause of the death, in opinion of the Doctor was harmorhagic shock due to anti-mortem injuries. After completion of the investigation, a charge-sheet was filed in the Court of Additional Chief Judicial Magistrate under Section 302 IPC and also under Sections 3 and 5 of the Explosive Act. The case was committed by the ACJM to the Court of Sessions and subsequently on transfer, it came for

trial before the learned Additional Sessions Judge (Fast Track), Chittorgarh, who after hearing both sides framed charges under Section 302 IPC and also under Sections 3 and 5 of the Explosive Act on 04.7.1998. The accused denied the charges and claimed trial.

The prosecution in support of its case examined as many as 38 witnesses and in documentary evidence tendered 51 documents (Exhibit-P/1 to Exhibit-P/51).

After close of the prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded on 09.4.2001. The accused denied the allegation of the prosecution and claimed to be innocent. The accused has not produced any evidence in defence.

The learned trial Judge after hearing both sides, by its judgment and order dated 20.10.2001, convicted and sentenced the accused appellant as indicated hereinabove.

We have heard learned counsel for the accused appellant at a great length and also the learned Public

Prosecutor. We have also carefully scrutinized the evidence led by the prosecution and the material available on record.

It was contended by learned counsel for the accused appellant that in the present case there is no direct evidence available and the case depends upon the circumstantial evidence. According to learned counsel, the chain of the circumstances is not complete in the present case so as to connect the accused with the crime, therefore, conviction and sentence awarded by the learned trial Judge deserves to be set aside. It was further contended that First Information Report was lodged after nine days of the incident that shows that prosecution story is false and the plea of prestige issue or the bad name of the family was the reason not to report to police, is not sustainable for the reason that when search was made of the deceased in the village and other places, then, it cannot be believed that villagers did not know about the deceased having gone with the accused at her own desire. It was further contended that there are contradictions in the statements of the witnesses and

if that is so, then, the evidence of the prosecution witnesses can not be relied upon. The recovery of the clothes of the deceased on the information of the accused is not trustworthy.

On the other hand, learned Public Prosecutor supported the impugned judgment of the learned trial Judge. According to learned Public Prosecutor, the prosecution in this case by circumstantial evidence has been able to prove each and every circumstance which connects the accused with the crime, therefore, the learned trial Judge has rightly convicted and sentenced the accused appellant. Therefore, no interference is required to be made by this Court in the finding of the guilt recorded by the learned trial Judge.

We have considered the rival submissions made before us.

Before proceeding further, the medical evidence in the case requires to be examined, which is found in the statement of PW-28 Dr. Naresh Goyal. This witness has stated that he conducted post-mortem of the dead body

of the deceased on 14.11.1997, while he was posted as Medical Officer, Kapasan. He found following injuries on the person of the deceased :

1. Lacerated wound red with profuse bleeding. It is near chest anteriorly on upper two third of chest and fermer auxilla to left auxilla. All the soft tissues of ribs underlying torn up severely. Ribs are fractured at multiple places and their outer part of chest is disappeared. The underlying- lungs, heart, major blood vessel portion proctis are torn up severely at multiple places completely with profuse bleeding. Trachea and pharynx is also lacerated at multiple places.
2. Lacerated wound red in colour with profuse bleeding on lower half of face including lower jaw and adjoining the portion. The underlying bones, mandible, teeth, tongue, major blood vessels, pharynx and trachea larynx and all neck prtoctis muscles lacerated and fractured, dislocated with disfigurement of lower face with profuse bleeding at multiple places.
3. Both hands at both wrist joints are not found.

There is big lacerated wound at both wrist joints with profuse bleeding Red in colour. Fracture of radius and ulna are present at both wrist joints.

4. Lacerated wound (Red) 10 cm x 6 cm pubic region of abdomen obliquely.

5. Lacerated wound (Red) 10 cm x 5 cm on abdomen right lateral side of abdomen.

6. Lacerated wound (Red) 20 cm x 10 cm medial aspect of right thigh.

7. Lacerated wound (Red) 8 cm x 6 cm medial aspect of left thigh.

8. Lacerated wound (Red) 8 cm x 10 cm on middle 1/3rd of left leg anteriorly with fracture of underlying tibia and fibula bones.

9. Lacerated wound (Red) 8 cm x 2 cm on medial aspect of left bones.

10. Lacerated wound (Red) 5 cm x 4 cm on medial aspect of right leg.

11. Lacerated wound (Red) 8 cm x 4 cm on lateral aspect of forearm.

The cause of the death was hemorrhagic shock due to anti mortem injuries No.1 to 3 found on the dead

body. PW-28 Dr. Naresh Goyal has proved the post-mortem report Exhibit-P/35, the opinion regarding cause of the death is available at place A to B in the Post-mortem Report Exhibit-P/35. A perusal of the statement of PW-28 Dr. Naresh Goyal and Post-mortem Report Exhibit-P/35, when read together indicates that the deceased died due to antimortem injuries found on the dead body and the death was not natural death. Thus, the death of the deceased was homicidal.

The case of the prosecution depends entirely on the circumstantial evidence, therefore, it is to be seen as to whether the learned trial Judge while appreciating the circumstantial evidence has correctly examined the same and the conclusions drawn on the basis of circumstantial evidence are such that leaves no doubt in the mind that it was the accused only who is responsible for the murder of the deceased and none else.

Before proceeding further, it is to be seen as to what is circumstantial evidence and what is its evidentiary value. In criminal jurisprudence,

circumstantial evidence is that which relates to service of other facts then the fact in issue; but which by experience have been found so associated with the fact in issue in relation of cause and effect that it leads to a satisfactory conclusion. It is one of the established principles of law that a witness may lie but not the circumstances. However, the Court must adopt a cautious approach while basing its conclusions purely on circumstantial evidence as in evidence there is no difference between direct and circumstantial evidence. The only difference is that the former directly establishes the commission of the offence whereas the later does so by placing circumstances which lead to irresistible inference of the guilt.

The Hon'ble Supreme Court has consistently held that circumstantial evidence must satisfy the following test :

(a) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
(b) Those circumstances should be of a definite

tendency unerringly pointing towards the guilt of the accused.

(c) The circumstances taken cumulatively should form a chain so complete that there is no scope from the conclusion that within all human probability the crime was committed by the accused and non else; and

(d) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis then that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

In the present case as discussed above, there is no direct evidence against the accused appellant and the prosecution has placed reliance on the following circumstances which were considered by the learned trial Judge :

(i) The accused and the deceased disappeared from the village together on 05.11.1997. Both of them stayed together at different places in the guest houses and hotels and finally the dead body was found on

14.11.1997 of the deceased near the well of the accused in severely damaged condition.

(ii) The accused alongwith deceased sold the ornaments of the deceased at different places.

(iii) The accused tried to mis-direct the investigation as on diary paper he wrote that murderer was one Bhangwan Jat, whereas when the hand-writing of the accused was compared with disputed writings by the expert, it was found that it was the hand writing of the accused appellant.

(iv) Recoveries of clothes of the deceased at the instance of accused stained with human blood.

(v) Death was caused by a explosive material (Dynamite).

First Circumstance : The accused and the deceased disappeared from the village together on 05.11.1997. Both of them stayed together at different places in the guest houses and hotels and finally the dead body was

found on 14.11.1997 of the deceased near the well of the accused in severely damaged condition.

The relevant evidence in this regard may be discussed here. PW-2 Mangi, who is mother of the deceased has stated in the Court that her daughter disappeared from the village, on that day the accused also disappeared. Deceased Ratni left the house on the pretext that she would go to the well but she did not go there. A search was made at different places for continuous nine days but whereabouts of the deceased could not be known and ultimately her dead body was found near the well of the accused. The accused has killed her by explosive substance (Dynamite). PW-3 Smt. Kashi, who is grand-mother of the deceased has deposed that the deceased was killed by the accused and the deceased disappeared from the village before 5-6 months ago of recording her statement in the Court.

PW-9 Kishan has stated that before one year of the recording of his statement in the Court, he was on his field which was situated on the way to Bhamariyan. At that time, he saw accused Shankar Lal and deceased

Ratni while they were passing that way. On the same day in the evening, the brother of the deceased told him that Ratni had disappeared with the accused from the village. PW-16 Bhagwanlal has also supported the version of the above witnesses. All these witnesses have stated that the accused and the deceased both have gone together from the village and a search was made at various place and ultimately dead body of the deceased was found near the well of the accused.

PW-20 Nojji has stated that before one and half years of recording of his statement in the Court, Ratni had stayed with him for two days. Accused Shankar Lal of village Tasvariya came there. Accused Shankar Lal took the deceased with him. PW-25 Smt. Shairabano is the witness who has stated that the accused came alongwith one woman at her house and a bicycle was kept there. The evidence of above witnesses without any manner of doubt proves that it was the deceased who took the deceased with him from the village.

Now, it is to be seen that after leaving village where they had gone. In this connection, the evidence

of the prosecution is that they stayed in Dharmshala situated in Charbhuja, thereafter they stayed in a Guest House at Chittorgarh and lastly they stayed in North Star Hotel, Udaipur. The relevant evidence in this regard is of PW-27 Bhanwarpuri, PW-32 Kalyanchand and PW-37 Mahavirprasad. The above witnesses deposed in their statements that the accused alongwith the deceased came to their hotel/guest house and stayed together as husband and wife. In the registers entries were made shows arrival and departure in the hotels and guest houses, which contains signature of accused Shankar Lal. The witnesses have proved in this regard Exhibits P/48, 43 and 46. Nothing concrete has been extracted in the cross-examination, which may dis-entitle the testimony of these witnesses. Thus, taking into consideration the evidence of prosecution, we are of the opinion that the prosecution has been able to prove that the deceased after leaving the village with accused also stayed at different places with the accused at hotels/guest houses till her dead body found near the well of the accused.

Second circumstance :The accused alongwith deceased sold the ornaments of the deceased at different places.

To prove the above circumstance, the prosecution has relied on PW-4 Sohan, who has deposed that before 10 or 11 months of recording of his statement in the Court, accused Shankar Lal came to his shop alongwith a woman who was introduced by the accused as his wife. They gave silver ornaments and in exchange silver anklet (Pijab) was taken by them. The police went to his shop and recovered 144 gms silver piece which was made by melting silver ornaments given by the accused. The witness has proved Exhibit-P/5 in this behalf.

PW-7 Mohan in his statement has stated that on 6.11.1997 the accused alongwith one woman came to his shop and on their plea that construction was going on of his house and he was in need of money, therefore, he sold one ornament known as Ramnawmi and for that the accused received a sum of Rs.42,000/-. The witness has proved Bill Exhibit-P/46 which contains signature of the accused. Other relevant evidence in this regard is of PW-12 Bangliprasad and PW-13 Namdev. The above

witnesses have also stated about the accused and the deceased came to their shops. These witnesses have also proved the entries made by the shop-keepers regarding selling of ornaments to them in the relevant registers. The witnesses have also proved the signatures of the accused appellant on the entries made in the registers. In view of the above evidence led by the prosecution, the prosecution has been able to prove that not only the accused took the deceased with him from her village but they stayed together as husband and wife at different places i. e. Charbhuja, Chittorgarh and Udaipur and also sold ornaments of the deceased. Nothing has been elicited from the witnesses in the cross-examination to disapprove the testimony. The witnesses have also identified the accused in the Court. The above circumstance has also been proved successfully by the prosecution by placing reliable evidence.

Third circumstance : The accused tried to mis-direct the investigation as on diary paper he wrote that murderer was one Bhangwan Jat, whereas when the hand-writing of the accused was compared with disputed

writings by the expert, it was found that it was the hand writing of the accused appellant.

To prove the above circumstance, the prosecution has relied on the evidence of PW-11 Manoj, who at the relevant time was SDO, Kapasan. This witness has stated that on 14.12.1997 he was posted as SDO, Kapasan at that time Nasir Mohd., Investigating Officer of the case came to him alongwith accused Shankar Lal on his request, he obtained signatures of the accused in different speeds. The witness has further stated that the accused was asked to sign in slow manner and in fast manner. The accused made signature before him. The accused's hand-writing Exhibits-P/14 to P/16 have been proved by this witness. Nothing has been elicited from this witness in the cross-examination. Thus, the disputed writings found at the spot when was compared with the signatures and the writing of the accused, it was found that the accused wrote on the diary paper name of Bhagwan Jat that he killed the deceased. The State Forensic Science

Laboratory Report Exhibit-P/50 tendered in the evidence

makes a mention that the writings marked as Q1 to Q6 and S1 to S42 and A1 to A3 have been written by one and same person. Thus, the prosecution has been able to prove that the writing found on diary paper at the spot was in the hand writing of the accused. It is correct that expert opinion is not a conclusive proof but definitely it is corroborative piece of evidence. PW-11 in the capacity as SDO, has obtained admitted signatures in different speeds of the accused and the signatures of the accused in the registers of different hotel where he stayed resembles with the disputed hand writing as appears from Expert Report Exhibit-P/50. This circumstance in our humble opinion is indicative of the criminal mind of the accused and efforts were made to mis-direct the investigating agency by placing at the spot diary papers with the mention of the name of one Bhagwan Jat as culprit so that investigation could be misdirected. Thus, this circumstance has also been proved by the prosecution satisfactorily.

Fourth Circumstance : Recoveries of clothes of the deceased at the instance of accused stained with human blood.

The relevant evidence in this regard is of PW-26 Nasir Mohd, who stated that during the course of the investigation, the accused was arrested vide Exhibit-P/30. He gave information at his own in police custody under Section 27 of the Indian Evidence Act and on the basis of his information which was recorded vide Exhibit-P/31, recoveries were made by him. The accused also gave information regarding purchase of explosive substance (Dynamite) which was recorded in Exhibit-P/32. The accused also furnished information regarding the clothes of the deceased and ornaments of the deceased. This witness has also collected evidence from different places where the accused alongwith deceased stayed in hotels and guest houses. The site was also inspected by him at the instance of the accused. PW-29 Jamnalal, PW-31 Danesh Sharma, PW-30 Ratan Singh, SHO, Police Station, Kapasan and PW-35 Mohd. Mustafa, ASI, Police Station, Kapasan, are the witnesses in relation to investigation and recoveries in the present matter. The clothes of the deceased recovered at the instance of the accused contained human blood as per FSL Report Exhibit-P/51. The learned trial Judge had discussed the

evidence of these witnesses in detail. There appears no reason to disbelieve their deposition in the Court.

Fifth Circumstance :Death was caused by explosive material (Dynamite).

To prove this circumstance the prosecution has relied upon the evidence of PW-26 Nasir Mohd. This witness has deposed that on 26.11.1997 he was posted as Second Officer, at Police Station, Kapasan. The witness has stated that he has conducted the investigation in the matter. On 26.11.1997, the accused gave information to him in the police custody under Section 27 of the Indian Evidence Act, wherein it was informed that explosive material was purchased by him from one Munna @ Gulam Rashul. On the very same day i. e. 26.11.1997 he got recovered the clothes of the deceased, which were thrown in a well through Exhibit-P/31. The explosive (Dynamite) was recovered from the spot sent for examination in the Explosive Department in Exhibit-P/45. On examination, it was found that the explosive material was of higher degree of explosive. This witness has further stated that sanction to

prosecute under the provisions of the Explosive Act Exhibit-P/49 was obtained. A perusal of the post-mortem report reveals that upper part of the breast had disappeared and the ribs were broken. The face was badly damaged. Lungs and heart were also damaged. The injuries sustained by the deceased were anti-mortem in nature and could be the result of explosion of dynamite as has been stated by the witnesses of the prosecution.

Be that as it may, it is amply proved by the reliable evidence produced by the prosecution that the accused took the deceased from the village with him on 5.11.1997 and thereafter the deceased was taken to various places. She was found pregnant in the post-mortem report and her dead body was found near the well of accused Shankar Lal. Nothing has been explained by the accused under Section 313 Cr.P.C. regarding recoveries of the clothes and ornaments of the deceased. No explanation has been offered to suggest that the dead body found from the place was not in the ownership/possession of the accused. Taking together all the circumstances discussed hereinabove, the

prosecution has without any manner of doubt been able to prove the guilt of the accused that it was accused only, none else who committed the murder of the deceased, therefore, the judgment and order passed by the learned trial court needs no interference by this Court.

Accordingly, the appeal stands dismissed after confirming the conviction and sentence passed by the learned trial Judge in Sessions Case No.56/2001.

(SATYA PRAKASH PATHK), J. **(B. PRASAD), J.**

vijayant